Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

ROBERT TERRY,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition for Writ of Certiorari to the
Appellate Court of Illinois,
First District

PETITION FOR WRIT OF CERTIORARI

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(1a) QUESTION PRESENTED

1. Whether the Fourth Amendment recognizes the reasonable expectation of privacy of non-overnight guests in those communal areas where they have a right to be as invitees, i.e., living rooms, kitchens, dining rooms, and whether the decision of Illinois State Courts that there is no reasonable expectation of privacy unless one intends to sleep overnight at a guest residence is contrary to the common sense holding of this Court in Minnesota v. Olson, 495 U.S. 91, 109 L.Ed.2d 85, 110 S.Ct. 1684 (1990).

(1b) PARTIES INVOLVED [per Rule 21.1(b)]

Petitioner, Robert Terry, was the defendant in the Circuit Court of Cook County, appellant in the Appellate Court of Illinois, First Judicial District and petitioner in the Supreme Court of Illinois.

Respondent, People of the State of Illinois, was the plaintiff in the Circuit Court, appellee in the Appellate Court of Illinois, and respondent in the Supreme Court of Illinois.

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A. Illinois Appellate Court Order dated March 24, 1995 . . . App. 1

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(1d) Judgment Below

The Order of the Appellate Court of Illinois, First Judicial District, No. 1-94-1434, not reported, is attached as Appendix A to this Petition.

TABLE OF AUTHORITIES

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

No.

ROBERT TERRY,

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PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

Petitioner, Robert Terry, (hereafter, petitioner, or defendant), prays that a Writ of Certiorari issue to review the judgment of the Appellate Court of Illinois, First Judicial District,

affirming the judgment (conviction and sentence) of the Circuit Court of Cook County, Illinois, Criminal Division.

Defendant was convicted of possession of a controlled substance and sentenced to 24 months' probation.

Judgment and Opinion Below

The Order of the Appellate Court of Illinois, First Judicial District, affirming the Circuit Court's judgment, is set out as App. A. The Order is not reported.

Jurisdictional Statement

On March 24, 1995, the Appellate Court of Illinois, First Judicial District, filed its Order (App. A) affirming the judgment of the Circuit Court. Petition for Leave to Appeal to the Supreme Court of Illinois, No. 78906, was denied on June 1, 1995. (App. B)

This Petition for Certiorari is timely filed within 90 days thereafter.

Jurisdiction is invoked under 28 U.S.C. Sec. 1257(a) and Rules 10.1, 12.1 and 13.1 of this Court.

Constitutional Provisions

The Fourth Amendment to the U.S. Constitution provides:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment to the U.S. Constitution provides, in pertinent part:

> "Section 1 ... No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person the equal protection of the laws."

STATEMENT OF THE CASE

Defendant was a guest in another citizen's home. He was also that citizen's patron. The other citizen sold cocaine. Defendant snorted cocaine. Defendant was sitting at the kitchen table snorting cocaine. The police forced entry into the apartment where defendant was a guest and saw the defendant snorting cocaine. When they saw him, defendant was leaning over the table with his face into a white bag with his fingers up one side of nose and sucking up some white powdered substance off the plate on the table. (Tr. 22) Defendant could not be observed by the police from outside the house. (Tr. 22)

The police had not been invited into the apartment. Defendant asserted the

entry was illegal in violation of his rights as protected by the Fourth Amendment to the United States Constitution and Article I, Section 6 of the Constitution of Illinois.

Defendant testified he was in the apartment visiting Mrs. Cowart and her husband (Tr. 24), that they had invited him there (Tr. 24), and he had bought some heroin from them. (Tr. 25) Defendant testified that he expected to be able to sniff his drugs privately. (Tr. 25) He did not expect the police to come into the apartment. (Tr. 26) Defendant was going to stay in the apartment long enough to sniff his cocaine and then leave. He had no clothes and no keys to the apartment. (Tr. 27) The trial court ruled on these

facts defendant had no expectation of privacy. Because of the court's ruling, it never ruled on or heard all of the evidence on the issue of probable cause to enter.

RAISING THE FEDERAL QUESTION BELOW

Argued in the trial court was that petitioner had a reasonable expectation of privacy in a house that he was visiting as a guest and as a patron of the owner who sold him drugs and permitted him to use those drugs in the house. The court held there was no standing.

This issue was the sole issue on appeal and was considered by the Appellate Court. (App. 5-9)

REASONS FOR GRANTING CERTIORARI

1.

The Fourth Amendment recognizes the reasonable expectation of privacy of non-overnight guests in those communal areas where they have a right to be as invitees, i.e., living rooms, kitchens, dining rooms, and the decision of Illinois State Courts that there is no reasonable expectation of privacy unless one intends to sleep overnight at a guest residence is contrary to the common sense holding of this Court in Minnesota v. Olson, 495 U.S. 91, 109 L.Ed.2d 85, 110 S.Ct. 1684 (1990).

The Illinois Appellate Court in this case relied upon the prevailing view of the Illinois courts:

> "[t]hat in Illinois courts have repeatedly declined to grant such status to persons who are guests or merely present in someone's home or another property when it was searched." (App. 8)

This Illinois position is in direct contradiction to the far better reasoned

opinion of the Supreme Court of North Dakota in State v. Ackerman, 499 N.W.2d 882 (N.Dak. 1993), and this Court's well-reasoned analysis in Minnesota v. Olson, 495 U.S. 91, 109 L.Ed.2d 85, 110 S.Ct. 1684 (1990). See LaFave, Search and Seizure, Sec. 11.3, at 56 (2d ed. 1987, 1993 Pocket Part).

The Illinois rule is also contrary to common sense. Under that rule, the eighteen-year-old boyfriend of a teenage daughter who is invited by her to stay in her bed overnight without the knowledge of her parents for a little frolic has standing to object to the entry of the police, as does the nefarious Romeo who is invited into a wife's bed while the husband is out working the night shift, while when

during the day if grandpa is over visiting his grandchildren for some grandfatherly pleasure, or grandfather and grandmother are over for Thanksgiving, Passover, or Christmas dinner, or aunts and uncles are there to celebrate a child's first birthday, a bris, or a neighbor who comes over to listen to the plight of the woman of the house concerning her abusive husband, all of these people have no standing.

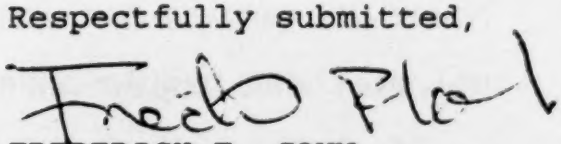
If that is the law under the Fourth Amendment to the United States Constitution, then, as Mr. Bumble said in Charles Dickens' Oliver Twist, ch. 51, "The law is a ass, a idiot."

This Court should grant certiorari to correct the stupid rule as it exists in Illinois and to straighten out the rest of the country.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,



FREDERICK F. COHN
Attorney for Petitioner

APPENDICES

APPENDIX A

FIFTH DIVISION
March 24, 1995

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 1-94-1434

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 92 CR 5662
ROBERT TERRY,	)	Honorable Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

O R D E R

Following a stipulated bench trial in the circuit court of Cook County,

defendant was found guilty of possession of a controlled substance. He was then sentenced to 24 months' probation and referred to a drug treatment program. On appeal, defendant contends that the trial court's denial of his pretrial motion to suppress evidence based on a lack of standing was manifestly erroneous.

The record shows that about 2 p.m. on January 27, 1992, police entered the apartment of Juanita Coward at 4757 South Vincennes Avenue in Chicago. Inside they observed the defendant sitting at the dining room table sniffing white powder from a plate. When defendant became aware of their presence, he jumped up and dumped the contents of the plate into the brown bag

which was next to him. Police recovered this bag and discovered therein three foil packets of a white powdered substance which defendant told them was heroin.

Defendant was placed under arrest and charged with possession with intent to deliver less than 10 grams of a substance containing heroin. At trial the parties stipulated that the total weight of the recovered matter was 4.84 grams, and that the one packet which was tested proved positive for heroin.

Prior to trial, defendant filed a motion to suppress the seized evidence contending that the seizure was made in violation of his constitutional rights. The hearing on this motion focused on the issue of standing.

In that proceeding Chicago police detective Ivory Hampton testified that he went to the apartment in question and was met at the front door by Ms. Coward. When he entered he saw defendant seated at the dining room table engaging in the activity described above.

Defendant testified that he was visiting Ms. Coward and her husband at the time and had bought some heroin there. He acknowledged that he did not live at that address, that he had no intention of spending the night there, and that he was going to leave these premises when he finished his business. He also testified that he did not have keys to the apartment, that he did not keep any of his clothes there, and that

he intended to take his brown bag with him when he left.

After arguments and authority were presented by counsel, the trial court denied defendant's motion to suppress, finding that he had no standing to bring it. The court ruled that defendant had no expectation of privacy in Coward's premises which society was willing to accept, and therefore could not object to the seizure which had taken place.

In this appeal defendant contests the propriety of that decision. He maintains specifically that as a guest in, and patron of, another person's home, he had a reasonable expectation of privacy while sniffing his drugs, and was entitled to contest the seizure of evidence from that home by police.

The fourth amendment protection against unreasonable searches and seizures extends only to individuals who have a reasonable expectation of privacy in the place searched or the property seized. (People v. Johnson (1986), 114 Ill. 2d 170, 191, 499 N.E.2d 1355 (citing Rakas v. Illinois (1978), 439 U.S. 128, 143, 58 L. Ed.2d 387, 99 S. Ct. 421.) The capacity to claim these protection depends on whether the claimant has a legitimate expectation of privacy in the place searched, i.e., one that society is prepared to recognize as reasonable. People v. Taylor (1993), 245 Ill. App. 3d 602, 610, 614 N.E.2d 1272 (citing cases).

In this case defendant urges that we reverse the trial court's ruling

based on the decision of the Supreme Court of North Dakota that a non-overnight guest in a friend's home has standing to seek the suppression of evidence seized from that home. (State v. Ackerman (N.D. 1993), 499 N.2d 882.) That decision extended the ruling of the United States Supreme Court in Minnesota v. Olson (1990), 495 U.S. 91, 95-99, 109 L. Ed.2d 85, 110 S. Ct. 1684, that an overnight guest in another's home had a sufficient expectation of privacy in the premises which society was prepared to recognize as reasonable to confer standing to challenge a search therein. This status has also been applied to an overnight guest in a hotel room. See People v. Olson (1990), 198 Ill. App. 3d 675, 556 N.E.2d 273.

In People v. Ervin (1994) ___ Ill. App. 3d ___, 645 N.E.2d 355, a division of this court pointed out that in Illinois courts have repeatedly declined to grant such status to persons who are guests or merely present in someone's home or another property when it is searched. Then, in light of this precedent, the court in Ervin specifically declined defendant's invitation to deviate from it and follow the broad pronouncement of the court in Ackerman which would have allowed him to contest the search and seizure conducted in his former wife's home. (People v. Ervin, ___ Ill. App. 3d at ___, 645 N.E.2d at 359-60.) We find Ervin dispositive of this case, and likewise decline defendant's invitation to apply

the expansive ruling of Ackerman to the situation at bar.

In sum, we find no manifest error in the trial court's denial of defendant's motion to suppress evidence. (See People v. Neal (1985), 109 Ill. 2d 216, 486 N.E.2d 898), and therefore we affirm its judgment. Pursuant to People v. Nicholls (1978), 71 Ill. 2d 166, 374 N.E.2d 194, we grant the State's request that defendant be assessed $100 as costs for the State's defense of this appeal and incorporate it as part of our judgment.

Judgment affirmed.

GORDON, J., with COUSINS, Jr., P.J., and McNULTY, J., concurring.

APPENDIX B

78906

ILLINOIS SUPREME COURT
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June 1, 1995

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No. 78906 - People State of Illinois, respondent, v. Robert Terry, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause and entered the enclosed supervisory order.

The mandate of this Court will issue to the Appellate Court on June 23, 1995.

NO. 78906 - SUPERVISORY ORDER

In the exercise of this Court's supervisory authority, the portion of the judgment of the Appellate Court, First District, in case No. 1-94-1434, awarding costs to the State for defending the appeal is VACATED.